

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

Massimiliano Pincione :

Plaintiff :

v. :

David Dale :

Defendant :

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Case No. 1:11-cv-00367 (AJT/IDD)

David Dale :

and :

SMI Hyundai Corporation Ltd. :

Counterclaim Plaintiffs :

v. :

Massimiliano Pincione :

and :

H.R.H. Prince Khaled Bin Al Waleed :

Counterclaim Defendants :

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**LIST OF WITNESSES AND EXHIBITS TO BE USED AT TRIAL**

Now comes Defendant David Dale, acting pursuant to the May 2, 2011 Order of this Court, and submits a list of the witnesses to be called at trial and a list of the exhibits to be used at trial pursuant to Rule 26(a)(3)(A)(iii).

**WITNESSES TO BE CALLED AT TRIAL:**

David Dale

Peter Jung

Massimiliano Pincione

Hartford R. Kittel

Robert W. Lesnevich

**LIST OF EXHIBITS:**

**I. DEPOSITIONS.**

**A. Deposition of David Dale October 5, 2011 with exhibits 1-28.**

1. September 24, 2009 original commission agreement between SMIH and Prince Khaled/Max Pincione.
2. February 22, 2010 amendment to commission agreement.
3. September 24, 2009 commission agreement between SMIH and David Dale.
4. September 23, 2010 email from M.K. Kim to Prince Khaled regarding the transfer of money out of Libya.
5. December 22, 2009 summary of filed issues by Zain.
6. November 16, 2010 email from David Dale to Max Pincione regarding the disbursement of funds.
7. November 16, 2010 separation and settlement agreement between SMIH and Prince Khaled/Max Pincione.
8. February 24, 2011 email from Prince Khaled to David Dale negotiating the commissions to be paid.
9. May 7, 2010 disputed agreement.
10. February 23, 2010 email from David Dale to Prince Khaled negotiating the commissions

to be paid.

11. February 27, 2011 email from David Dale to Prince Khaled in which he accuses Max Pincione of forgery.
12. March 10, 2011 email from Peter Jung to David Dale with a draft of a letter to Max Pincione. March 11, 2011 email from David Dale to Peter Jung with minor changes to Peter's letter to Max Pincione. March 11, 2011 email from Peter Jung to Max Pincione asking Max to not get Peter involved in legal matters.
13. March 16 and 30, 2011 emails from David Dale to Max Pincione and Khaled discussing the supposed changes in the commission agreement.
14. April 3, 2011 email from M.K. Kim to Prince Khaled discussing the disbursement of the funds wired out of Libya.
15. April 4, 2011 email from Prince Khaled to M.K. Kim explaining that they wouldn't have got any money without him and Max Pincione.
16. December 13, 2005 loan agreement between David Dale and M.K. Kim.
17. June 3, 2008 promissory note between SMIH and Enerland Corporation Co., Ltd.
18. May 7, 2010 document referencing a \$40 million settlement with ODAC.
19. May 18, 2010 instructions to J&T Bank providing \$4.6 million to be transferred into Prince Khaled/Max Pincione's account.
20. May 18, 2010 instructions to J&T Bank providing \$15 million to be transferred into Prince Khaled/Max Pincione's account.
21. December 4, 2009 letter from HeimLantz to Prince Khaled with summary of costs by site for work done by SMIH in Libya.
22. More charts describing the costs of projects SMIH did in Libya.

23. SMIH company structure chart.
24. January 19, 2011 document assigning stock of SMIH to David Dale.
25. August 12, 2010 UMMA bank meeting recording transcript.
26. April 9, 2010 hand written commission agreement made in Washington DC.
27. May 20, 2010 settlement made between SMIH and ODAC.
28. March 17, 2011 email from Prince Khaled to Peter Jung responding to Peter's email accusing Max Pincione of forgery.

**B. Deposition of Massimiliano Pincione October 6, 2011 with exhibits 1-74.**

1. October 13, 2009 email from Max Pincione to David Dale and M.K. Kim with a signed September 24, 2009 agreement attached.
2. February 22, 2010 amendment to commission agreement.
3. February 24, 2010 email from Peter Jung to Max Pincione with minutes from their London meeting.
4. February 25, 2010 email from M.K. Kim with the original September 24, 2009 agreement and the amended agreement attached.
5. April 3, 2010 email with a letter from M.K. Kim to Prince Khaled regarding the \$23 million settlement with ODAC.
6. April 6, 2010 emails between M.K. Kim and Prince Khaled regarding increasing Prince Khaled/Max Pincione's commission after realizing the ODAC settlement was \$23 million.
7. April 7, 2010 email from David Dale to Max Pincione rejecting increasing Prince Khaled/Max Pincione's commission to 50%.
8. April 9, 2010 hand written commission agreement made in Washington DC.

9. April 28, 2010 email from David Dale to M.K. Kim attaching a copy of the typed April 9, 2010 agreement.
10. May 1, 2010 email from Peter Jung to David Dale and M.K. Kim about the branch manager.
11. May 4, 2010 email from Peter Jung to M.K. Kim explaining some of the changes Max Pincione wants to be made to the typed April 9, 2010 agreement.
12. May 7, 2010 disputed agreement.
13. May 7, 2010 email from Peter Jung to Max Pincione, M.K. Kim, and David Dale with the Hold Harmless Stock agreement attached.
14. May 20, 2010 email from Max Pincione to Peter Jung and M.K. Kim requesting the document reflecting the meeting in Washington DC.
15. January 3, 2011 email from Prince Khaled to David Dale with reasons why the commission is \$15 million.
16. January 4, 2011 emails between David Dale and Prince Khaled negotiating commissions.
17. February 4, 2011 email from David Dale to Prince Khaled stating the facts, as he understood them.
18. February 10, 2011 email from Prince Khaled to David Dale refusing David's offer.
19. February 25, 2011 email from Prince Khaled to David Dale with the disputed May 7, 2010 document attached.
20. March 17, 2011 email from Prince Khaled to Peter Jung asking that he take back his accusation of forgery.
21. Korean documents listing the names of Korean workers employed by SMIH for the project in Libya.

22. January 25, 2010 email from Max Pincione to M.K. Kim introducing the J&T Bank employees.
23. January 26, 2010 email from Max Pincione to M.K. Kim with an attached board resolution.
24. February 25, 2010 email from M.K. Kim to Peter Jung with attached instructions for J&T Bank.
25. February 18, 2010 email from Peter Jung to M.K. Kim with attached J&T Bank agreement.
26. February 19, 2010 email from Max Pincione to Gian Guastalla asking for some changes to J&T Bank account.
27. February 24, 2010 email from Max Pincione to M.K. Kim and Peter Jung explaining the agreement with J&T and how funds will be transferred.
28. March 5, 2010 instructions to J&T Bank.
29. April 30, 2010 email from Peter Jung to David Dale and M.K. Kim explaining concerns with J&T Bank.
30. May 2, 2010 email from David Dale to Max Pincione and Peter Jung suggesting an alternative bank to J&T.
31. May 5, 2010 email from Peter Jung to M.K. Kim, David Dale, and Max Pincione discussing J&T Bank instructions.
32. May 10, 2010 email from Peter Jung to M.K. Kim with J&T Bank corrections attached.
33. May 18, 2010 instructions to J&T Bank providing \$4.6 million to be transferred into Prince Khaled/Max Pincione's account.
34. May 18, 2010 instructions to J&T Bank providing \$15 million to be transferred into

Prince Khaled/Max Pincione's account.

35. June 16, 2010 email from David Dale to Peter Jung asking why Max Pincione wants to change the letter heading.
36. August 12, 2010 email from Max Pincione to Peter Jung, David Dale, and M.K. Kim asking for an SMIH letterhead.
37. June 16, 2010 email from Peter Jung to Max Pincione with bank transfer instructions for ODAC.
38. January 4, 2011 email from Riccardo Moriani to Peter Jung discussing the closing of J&T Bank accounts.
39. Levant Capital North America Inc. invoices to ODAC.
40. Istanbul Construction & Trading Ltd. invoice to Levant Capital North America Inc.
41. August 1, 2010 swift receipt of failure to transfer funds from Gumhouria Bank to a New York bank.
42. August 2, 2010 email from Max Pincione to Ibrahim Kadafi dealing with the wire transfer.
43. August 2, 2010 email from Ibrahim Kadafi to Max Pincione referencing new swift.
44. August 10, 2010 email from Max Pincione to Dr. El Hade and Ibrahim Kadafi asking for a copy of the swift.
45. August 11, 2010 email from Max Pincione to Dr. El Hade and Ibrahim Kadafi giving the bank coordinates for the wire transfer.
46. August 26, 2010 email from Ibrahim Kadafi to Max Pincione reviewing the invoices.
47. July 30, 2010 email from Max Pincione to Dr. El Hade and Ibrahim Kadafi informing them that the money was not transferred.

48. August 31, 2010 email to Max Pincione asking for him to call and confirm.
49. August 31, 2010 swift receipt.
50. September 7, 2010 email to Max Pincione regarding the second swift receipt.
51. September 7, 2010 swift receipt.
52. November 1, 2009 email from Max Pincione to M.K. Kim discussing progress of negotiations.
53. December 21, 2009 email from Max Pincione to David Dale and M.K. Kim summarizing the payments for contracts with Libya.
54. February 1, 2010 email from Max Pincione to M.K. Kim discussing progress of closing the settlement.
55. February 23, 2010 email from M.K. Kim to Peter Jung attaching SMIH's submission to ODAC for work done by SMIH in Libya.
56. April 2, 2010 email from Prince Khaled to M.K. Kim regarding the projected settlement.
57. May 8, 2010 email from Max Pincione to Peter Jung attaching documents regarding the ODAC settlement.
58. May 24, 2010 email from Peter Jung to David Dale and M.K. Kim with the final agreement with ODAC in Arabic attached.
59. June 16, 2010 email from Peter Jung to Max Pincione, David Dale, and M.K. Kim with a copy of the English contractual agreement with ODAC attached.
60. September 24, 2009 document appointing Prince Khaled as a member of the Board of Directors and Honorary Chairman of SMIH.
61. September 24, 2009 document appointing Max Pincione as Corporate Vice President for SMIH.



62. A letter written to Mr. Hong by Prince Khaled.
63. January 4, 2010 email from Max Pincione to M.K. Kim and David Dale with the Enerland letter attached.
64. January 6, 2010 email from David Dale to Max Pincione and M.K. Kim with the final draft of SMIH's New Year's message from Prince Khaled attached.
65. February 12, 2010 email from Max Pincione to M.K. Kim with a draft of a letter from SMIH written by Prince Khaled.
66. March 12, 2010 email from M.K. Kim to Peter Jung with a letter to Mr. Hong from Prince Khaled attached.
67. April 16, 2010 invitation of Prince Khaled by SMIH to be a member of the board of directors.
68. April 27, 2010 email from Peter Jung to Max Pincione, M.K. Kim, and David Dale with attached documents giving Prince Khaled majority share in SMIH until after the Libya settlement.
69. May 2, 2010 email from Peter Jung to David Dale, M.K. Kim, and Max Pincione regarding transfers of company shares.
70. January 27, 2010 email from Malcom Flinn to Max Pincione asking about involvement with SMIH.
71. January 27, 2010 email from Max Pincione regarding disbursement of funds.
72. January 1, 2010 email from Max Pincione to David Dale and M.K. Kim regarding Steve Tiddy.
73. October 29, 2009 email from Max Pincione to David Dale discussing the proposed working relationship.

74. September 20, 2010 email from Max Pincione to Peter Jung asking for passports.

**C. Deposition of Hartford R. Kittel October 12, 2011 with exhibits 1-11.**

1. September 7, 2011 expert witness disclosure for defendant David Dale.
2. Hartford Kittel's signature.
3. Closer examination of one known document and three unknown documents.
4. A zoomed in look at the May 7, 2010 document referencing a \$40 million settlement with ODAC.
5. Tests of the paper used for creating documents.
6. Examination of multiple known documents containing Peter Jung's signature.
7. Copies of documents in question.
8. More examination of multiple known documents containing Peter Jung's signature.
9. A copy of Max Pincione's expert witness disclosure as well as a memorandum of law from the case Max Pincione v. Harry Winston Inc.
10. Detailed notes on known documents.
11. Document literature for Hartford Kittel.

**D. Deposition of Robert W. Lesnevich October 13, 2011 with exhibits 1-9.**

1. August 12, 2011 expert witness disclosure for plaintiff Max Pincione.
2. Copies of Kittel Exhibit 7.
3. Enlarged photos of Peter Jung's alleged and authentic signatures for unknown and known documents.
4. Graph showing tests done by Robert Lesnevich.
5. Enlarged photos of Peter Jung's alleged and authentic signatures for unknown and known

documents with dates of the signatures added.

6. Copies of Kittel Exhibit 1.
7. Copies of Kittel Exhibit 8.
8. Colored copies of original documents provided to Robert Lesnevich for examination.
9. Copies of Kittel Exhibit 6 that Lesnevich had not seen.

## **II. OTHER EXHIBITS TO BE USED AT TRIAL.**

- A. D000725-732 – May 1, 2010 email from David Dale to Peter Jung with SMIH documents attached.
- B. D000828-831 – May 6, 2010 email from M.K. Kim to Peter Jung and David Dale with a draft agreement attached.
- C. D001143-1144 – May 18, 2010 email from Peter Jung to Max Pincione with J&T Bank instructions attached.
- D. D001207-1208 – September 21, 2010 email from Max Pincione to M.K. Kim discussing the situation with UMMA Bank.
- E. D001261-1263 – November 27, 2010 email from David Dale to Max Pincione explaining his understanding of what was going on with the settlement.
- F. D001315-1316 – December 26, 2010 email and attachments from Peter Jung to Dr. El Hadi asking for a receipt from the bank.
- G. D001320-1321 – December 31, 2010 email from David Dale to Prince Khaled negotiating the agreement.
- H. D001357-1372 – February 23, 2011 emails and attachments between David Dale and Prince Khaled regarding commissions due from the ODAC settlement.
- I. D002570 – January 19, 2011 document assigning stock of SMIH to David Dale.

- J. D002571-2572 – February 27, 2011 email from David Dale to Prince Khaled in which he accuses Max Pincione of forgery.
- K. MP00012-15 – JPMorgan Chase Bank statement.
- L. D002798-2803 – Documents received from Massimiliano Pincione.

**III. LIST OF EXHIBITS WE PLAN TO OFFER AT TRIAL IF THE NEED ARISES.**

- A. D000001-17 – Emails and attachments between David Dale and Max Pincione regarding the original September 24, 2009 agreement.
- B. D000020 – October 26, 2009 email from M.K. Kim to Max Pincione discussing the UMMA Bank.
- C. D000030-33 – September 24, 2009 email from David Dale to Max Pincione with the refined September 24, 2009 agreement attached.
- D. D000055-57 – October 8, 2009 email from David Dale to M.K. Kim with the revised September 24, 2009 agreement attached.
- E. D000892-982 – May 12, 2010 emails and attachments from M.K. Kim to Peter Jung regarding work done by SMIH in Libya.
- F. D001402 – September 10, 2009 document appointing Peter Jung as corporate secretary for SMIH.
- G. D001404 – January 27, 2010 SMIH document giving Peter Jung signatory power for the company.
- H. D001408-1409 – April 28, 2010 typed version of the April 9, 2010 agreement signed by both M.K. Kim and Peter Jung.
- I. D001424 – February 22, 2010 amendment to the September 24, 2009 agreement.
- J. D001630-1635 – November 11, 2008 letter from Vorys to the ODAC chairman.

- K. D001642-1664 – Summary of costs by site for work done by SMIH in Libya.
- L. D001744-1749 – December 4, 2009 letter from HeimLantz to Prince Khaled with basic floor plans for the Tripoli Conference Center Project.
- M. D001767-1810 – February 2008 Monthly Progress Report by SMIH for the Tripoli Conference Center Project.
- N. D002665-2702 – Memorandum of law for Pincione v. Harry Winston, Inc.

Respectfully submitted,

David Dale  
By Counsel

/s/

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James R. Tate (VSB #6241)  
Douglas E. Bywater (VSB #9137)  
Tate, Bywater & Fuller PLC  
2740 Chain Bridge Road  
Vienna, Virginia 22181  
Telephone: 703-938-5100  
Facsimile: 703-255-1097  
[jtate@tatebywater.com](mailto:jtate@tatebywater.com)  
[debywater@tatebywater.com](mailto:debywater@tatebywater.com)

**Certificate of Service**

I hereby certify that on the 19<sup>th</sup> day of October, 2011, a true copy of the foregoing was sent via first class mail, postage prepaid and was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Angela H. France, Esq.  
1725 Duke Street, Suite 240  
Alexandria, VA 22314  
[afrance@pctlg.com](mailto:afrance@pctlg.com)

Jay G. Safer  
LOCKE LORD BISSELL & LIDDELL, LLP  
3 World Financial Center  
New York, NY 10281  
[jsafer@lockelord.com](mailto:jsafer@lockelord.com)

\_\_\_\_\_/s/  
James R. Tate  
Douglas E. Bywater  
Counsel for David Dale